BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION

RONALD L. TORRES	)	
Claimant	)	
VS.	)	
	)	Docket No. 1,058,973
WOODMASTERS, INC.	)	
Respondent	)	
AND	)	
	)	
STATE FARM FIRE & CASUALTY COMPANY	)	
Insurance Carrier	)	

ORDER

Respondent and its insurance carrier (respondent) request review of the March 6, 2014, Order entered by Administrative Law Judge (ALJ) Brad E. Avery.

APPEARANCES

Stanley R. Ausemus, of Emporia, Kansas, appeared for the claimant. Denise E. Tomasic, of Kansas City, Kansas, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The Board has adopted the stipulations and considered the record presented to the ALJ. The record consists of the Deposition of Ronald Torres, taken January 24, 2012; the transcript of the April 6, 2012, preliminary hearing, with attached exhibits; the transcript of the September 21, 2012, preliminary hearing; the transcript of the November 1, 2013, preliminary hearing, with attached exhibits; the Deposition of Dustin Boyd, taken December 20, 2013; the Deposition of Ronald Torres, taken February 21, 2014; the transcript of the February 21, 2014, preliminary hearing, with attached exhibits; and the documents of record filed with the division.

ISSUES

The ALJ denied respondent's motion to terminate workers compensation benefits, finding claimant injured his left knee while carrying doors working for his employer. The ALJ specifically found:

> The Court has had the opportunity to observe the claimant in previous hearings and found him to be credible. The Court finds Mr. Torres's story believable that there were times when he was required to transport doors for installation. Respondent has produced evidence that there were others who were hired to move the doors in question. However, that does not mean the doors were always placed in the right location with the multi-floored construction project.[1]

Respondent appeals, arguing claimant should be denied compensation as the claimed injury did not arise out of and in the course of claimant's employment.

Claimant argues the ALJ's Order should be affirmed.

FINDINGS OF FACT

This Board member incorporates by reference the findings of fact from the Board's November 19, 2012, Order.

Claimant worked for respondent performing interior work installing cabinetry, counter tops, and doors among other things. Claimant's supervisor was J. Kurt Johnson, the owner of Woodmasters.[2] Woodmasters has been in business for 42 years. Claimant and Mr. Johnson were a two-man crew on an apartment complex job at Broadview Towers in Emporia, Kansas. At some point, the construction project moved to a location in Lawrence, Kansas. This was new construction rather than the remodeling construction at Broadview Towers.

Mr. Johnson testified claimant was hired to perform interior trim work. He also testified that the workers he hired were not responsible for bringing the doors from one floor to the other. That was the responsibility of the general contractor's laborers who stored all of the doors on the second floor.

Dustin Boyd, Project superintendent for First Management, Incorporated, testified during the six years of his employment, his job has been to run every aspect of the construction process from managing crews to interpreting what the architect intended.

---

[1] ALJ Order (Mar. 6, 2014).

[2] Mr. J. Kurt Johnson is identified at various times in this record and in this Order as Kurt, Curtis and Mr. Johnson.

First Management was the general contractor on the seven story multi-family building in Lawrence, Kansas.

Mr. Boyd testified his first step in the commencement of the project was to obtain bids from subcontractors to perform different aspects of work. Mr. Boyd received a bid from Woodmasters to perform the installation of splint jamb interior doors, trim, stairs, bathroom accessories and hardware. Exclusions from the bid included material stocking of units and filling of nail holes. First Management and Woodmasters entered into a contract in late September or early October 2011. Mr. Boyd indicated that, to his knowledge, no one at Woodmasters delivered or moved materials. He also indicated that Woodmasters consisted of one employee named Ron (claimant) and the owner, Kurt Johnson.

Mr. Boyd confirmed claimant was an employee of Woodmasters, not First Management. As part of its working relationship with First Management, Woodmasters had to present a Certificate of Insurance showing they had workers compensation and liability insurance. If claimant had workers compensation insurance, he was to report it to Woodmasters.

Mr. Boyd testified a lumber company, ProBuild, provided the materials for the project. The materials were paid for by First Management. ProBuild was responsible for delivering the doors to the project site. Records indicate ProBuild made a delivery of materials on November 16, 2011, and among those materials were louvered doors, bifold doors, and Glenview slab doors. These doors ranged in size from 2 feet, 10 inches wide to 3 feet wide, 6 to 8 feet tall. These doors were for the sixth floor of the structure.

Mr. Boyd testified Woodmasters began their work on the third floor of the seven floor structure and made their way up. He indicated that it took about a month to complete each floor.

Mr. Boyd testified that between November 8, 2011, and December 10, 2011, Lawn & Landscape, a division of First Management, provided services on the project. Lawn & Landscape kept logs which showed they did a variety of jobs, including sweeping, stocking appliances and carrying doors. Logs for November 12, 2011, show doors were carried to the second, third and fourth floors. Mr. Boyd indicated the doors are delivered to the second floor and Lawn & Landscape moves the doors were they are needed. Mr. Boyd testified that records show that on November 14, 2011, doors and trim were moved from the fourth floor to the fifth floor, and on November 18, 2011, doors and trim were moved again, but no floor was specified. On November 28, 2011, doors were moved from the ground floor to the fifth, sixth and seventh floors.

There are times when the doors were not delivered exactly like they were supposed to be, and times when the doors delivered were not the correct type or number or to the

correct floor. When that happened, First Management Lawn & Landscape was notified to correct the problem.

Mr. Boyd testified that he knew claimant and had daily contact with him. To his knowledge, claimant was never responsible for moving doors from floor to floor on the project. He also testified he never saw claimant moving any doors. He testified that First Management conducted regular meetings on safety and job progress. Typically these meetings were held on Mondays at 9:00 a.m. Information about work-related injuries and all OSHA forms were posted on laminated posters in the job trailer, and company policy is to notify him of anything, no matter how big or small. According to Mr. Boyd, claimant never attended any of those meetings. They were attended by the various superintendents and subcontractors.

Mr. Boyd was on site every day, but was not at all the locations where people were working. He was not entirely aware that on November 19, 2011, Woodmasters was working on the fifth floor finishing up the installation of a few doors that hadn't been taken care of yet. However, he wasn't surprised by this. He indicated that even if it turned out there were not enough doors or other doors were needed on a floor no one but those employed by First Management Lawn & Landscape were allowed to move doors. Mr. Boyd testified that Lawn & Landscape had roughly eight to ten laborers working on November 18, 2011. Some of those laborers were also working on November 19, 2011. From the invoices for that day it appears at least three laborers were working.

He testified the owner of Woodmasters was adamant his company would not move any doors or do any trim work on this project. Mr. Boyd testified that he was not aware of any situation where the painters had to take doors downstairs to paint them and then bring them back up to be hung. Claimant's counsel stated claimant contends this is the normal practice and would testify to it.

Mr. Boyd testified he is familiar with the particular door claimant claims to have been carrying when he was allegedly injured. He again denied ever seeing claimant carrying any doors. He didn't feel the door was heavy for him, but he also couldn't say how heavy the door was.

Mr. Boyd admitted he had an argument with the owner of Woodmasters over the owners' refusal to hire more help to complete the job on schedule. He testified that, with only two people performing the work, Woodmasters was behind schedule and had to work extra hours to try and meet the schedule. Mr. Boyd again denied doors were delivered to the wrong floors and Woodmasters having to remove those doors and retrieve the correct ones.

Mr. Boyd testified that on no occasion did claimant ever report an on-the-job injury. He also testified claimant never complained of knee pain and he never saw him limping. He testified claimant never submitted an incident or accident report and indicated that, to

his knowledge, claimant did not submit an incident or accident report to anyone else at First Management. Mr. Boyd testified if claimant had reported an accident to anyone, they would have directed claimant to him and an injury report would have been filled out and forwarded to his bosses. Claimant also never asked for any medical treatment for an on-the-job injury.

Mr. Boyd indicated claimant never complained about being unhappy about the manner in which materials were being delivered to the job site. He also never complained about materials not being delivered in a timely fashion, nor did he complain about being required to move doors upstairs for the project.

Claimant denied he was ever told anything about a contract existing between his employer Woodmasters and the owner of the building being built. Claimant testified Dustin Boyd was incorrect when he testified no one with Woodmasters delivered or moved materials. Claimant testified that he was the only employee on the job for Woodmasters and he moved material, including doors, trim and hardware. He never attended any safety meetings and was never told he was to report a workers compensation claim to Mr. Boyd. Claimant testified he didn't recall Mr. Johnson attending any safety meeting either.

Claimant testified doors were delivered to the second floor and lifted by forklift onto the balcony of each apartment for installation. Claimant testified First Management or ProBuild took care of this. Claimant testified that once the doors were placed in a room, he would proceed to unwrap them and take them to their location for installation. Claimant testified there were 70 to 75 doors on each floor of varying sizes. Claimant indicated the doors were not marked to indicate which room they were to go in. They only had the measurement and whether it was for the right or left.

Claimant testified that he and his boss, Curtis Johnson, moved every door. When they were short doors on a floor they would take doors from the next floor up. Claimant denied any help was provided by the Lawn & Landscape when doors had to be moved. Claimant testified the doors weighed approximately 100 -150 pounds. Claimant testified that he moved doors because he was instructed to do so by his boss, and while doing so he injured his knee on November 19, 2011. Claimant testified the laborers for Lawn & Landscape had not shown up for work yet on November 19, 2011, when he started moving doors, again at the instruction of Mr. Johnson.

Claimant testified Mr. Johnson never told him anything about reporting an injury, but they were sleeping in the same room and so he told him about the injury. He was never told he needed to report his injury to Mr. Boyd. Claimant also testified that Mr. Boyd saw him carrying doors. He testified to seeing Mr. Boyd throughout the day and at least twice he would peek in and check on the work being done. Claimant indicated he didn't know how Mr. Boyd thought that Lawn & Landscape were moving all of the doors, especially when they wouldn't know where to take them. He admitted that Lawn & Landscape did carry doors to the fifth floor. However, on Saturday, November 19, 2011, some of the

doors needed to finish the fifth floor were not there. He was then told by Mr. Johnson to go down to the second floor and get the doors they needed to finish the job on the fifth floor. He had already carried several doors from the second floor to the fifth floor when he suffered the injury to his left knee.

Claimant testified that on November 19, 2011, there was a pallet of doors for the sixth floor that were out behind the job trailer. Mr. Boyd used the forklift to lift them to the second floor of the building. Claimant testified that all of the doors delivered by First Management for the fifth floor were hung, minus the eight to ten doors they were short. He testified he obtained those doors from the shipment for the sixth floor.

Claimant also alleges he injured his left ankle on June 17, 2013, while trying to get out of bed. He stated his leg and knee wouldn't move and he caught the bottom of his heel underneath the bed frame. Claimant sought treatment on July 1, 2013, after his ankle began to swell. He claims the problems with his knee caused the ankle injury. He testified that his knee was locking up and he was not able to move his foot while getting out of bed. However, Cushing Memorial Hospital notes from July 1, 2013, indicate an injury date of June 27, 2013, to claimant's right ankle. There is nothing in the Cushing Memorial Hospital medical records relating this ankle injury to the knee injury.

At his attorney's request, claimant was examined by board certified physical medicine and rehabilitation specialist, Pedro A. Murati, M.D., on August 13, 2013, for an evaluation . When claimant met with Dr. Murati, he had left knee pain and swelling, left knee locking, and popping of the top of the left knee. Dr. Murati examined claimant and diagnosed the following: S/P left knee arthroscopy with medial meniscectomy, chondroplasty and synovectomy; left lateral collateral ligament laxity; left patellofemoral syndrome; and probable left lower extremity deep thrombosis. Dr. Murati found the diagnoses to be, within all reasonable medical probability, a direct result of the November 19, 2011, work-related injury. He found the accident was the prevailing factor of claimant's knee condition. He recommended yearly follow-ups for the left knee and a left lower extremity venous Doppler to rule out blood clots. Dr. Murati assigned a 22 percent left lower extremity impairment. He also assigned permanent restrictions.

At the November 1, 2013, preliminary hearing claimant was seeking re-evaluation of his knee and possible treatment with Dr. Lowry Jones. The February 21, 2014, preliminary hearing, involved claimant's request for reimbursement for certain prescription medication and respondent's request to terminate claimant's benefits entirely.[3] Claimant acknowledged being treated by Dr. John Vani through July 1, 2013. As of July 22, 2013, Dr. Vani indicated he was going to release claimant. However, claimant alleged ongoing pain at that time. Claimant was being treated with hydrocodone 7.5.

---

[3] It is unclear whether the ALJ had this transcript at the time the March 6, 2014, Order was issued, as the received date stamp on the transcript is March 11, 2014.

After being released by Dr. Vani, claimant transferred his care to his personal physician Dr. Nathan Bloom, who continued claimant's hydrocodone prescription. However, Exhibit No. 2 to the February 21, 2014, preliminary hearing indicates claimant was receiving hydrocodone through Dr. Bloom while still being treated by Dr. Vani. Even when claimant was referred to Dr. Jones on November 25, 2013, claimant continued receiving hydrocodone through Dr. Bloom. Dr. Bloom's prescription allowed one hydrocodone tablet every four hours. However, the number of pills indicated in Exhibit No. 2, exceeds one tablet every four hours. Claimant testified his pain level required him to take more than one pill every four hours. Claimant continues to have problems with his left knee, despite having physical therapy. Claimant indicated he might have to undergo another surgical procedure, and was scheduled to meet with Dr. Jones for that reason on February 27, 2014.

PRINCIPLES OF LAW AND ANALYSIS

K.S.A. 2011 Supp. 44-501b states in part:

> (a) It is the intent of the legislature that the workers compensation act shall be liberally construed only for the purpose of bringing employers and employees within the provisions of the act. The provisions of the workers compensation act shall be applied impartially to both employers and employees in cases arising thereunder.
> (b) If in any employment to which the workers compensation act applies, an employee suffers personal injury by accident, repetitive trauma or occupational disease arising out of and in the course of employment, the employer shall be liable to pay compensation to the employee in accordance with and subject to the provisions of the workers compensation act.
> (c) The burden of proof shall be on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record.

In the November 29, 2012, Order from this Board Member, it was pointed out the severely bruised truth in this record. Unfortunately, the situation has not improved with the addition of the testimony of claimant, both at the preliminary hearing on February 21, 2014, and during claimant's deposition also on February 21, 2014, and the deposition of Mr. Boyd on December 20, 2013. While Mr. Boyd calls into question claimant's allegations of moving doors on the date of accident, he also admits that he did not see claimant every moment of every day.

The ALJ remains in the enviable position of being able to evaluate the testimony and credibility of claimant and any witnesses who testify before him. The ALJ described claimant as being believable. It is also understandable that, while people were responsible for delivering the doors to the correct floor, mistakes sometimes might occur at construction sites.

This Board Member again finds claimant has proven, although by the barest of margins, that he suffered the injury claimed on November 19, 2011, while working for respondent. The Order of the ALJ issued on March 6, 2014, is affirmed.

By statute, the above preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.[4] Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2013 Supp. 44-551(l)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

CONCLUSIONS

Claimant has proven that he suffered the accidental injury claimed on November 19, 2011. The award of benefits in the March 6, 2014, Order is affirmed.

DECISION

WHEREFORE, it is the finding, decision and order of the undersigned Board Member that the Order of Administrative Law Judge Brad E. Avery dated March 6, 2014, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of April, 2014.

_____
HONORABLE GARY M. KORTE
BOARD MEMBER

c: Stanley R. Ausemus, Attorney for Claimant
kathleen@sraclaw.com

Denise E. Tomasic, Attorney for Respondent and its Insurance Carrier
denise@tomasicrehorn.com

Brad E. Avery, Administrative Law Judge

[4] K.S.A. 2013 Supp. 44-534a.